IDEAL CITY DEVELOPMENT SDN BHD v. TRIBUNAL PENGURUSAN STRATA PUTRAJAYA, WILAYAH PERSEKUTUAN & ANOR

COURT OF APPEAL, PUTRAJAYA
S NANTHA BALAN JCA
MOHD NAZLAN GHAZALI JCA
CHOO KAH SING JCA
[CIVIL APPEAL NO: W-01(A)-2-01-2023]
11 NOVEMBER 2024

Abstract – *The Strata Management Act 2013 ('SMA') does not accord any right to an individual parcel owner to obtain certain documents and information from the developer and, flowing from that, the Strata Management Tribunal ('Tribunal') does not have the jurisdiction to order the same in an award. Furthermore, and in any event, when the documents sought by the individual parcel owner had already been handed over to the joint management body ('JMB'), under s. 15 of the SMA, it is wrong for such individual parcel owner to make such claim against the developer instead of the JMB before the Tribunal.*

STRATA PROPERTY: *Strata title – Strata Management Tribunal – Jurisdiction – Individual parcel owner filed complaint against developer at Strata Management Tribunal ('Tribunal') – Parcel owner initiated action after establishment of joint management body – Individual parcel owner sought supply of certain documents and information from developer – Tribunal delivered award compelling developer to furnish documents – Whether Tribunal had jurisdiction to deliver award in favour of individual parcel owner – Whether action initiated against wrong party – Strata Management Act 2013, ss. 15, 102, 105 & 107 – Strata Management (Strata Management Tribunal) Regulations 2015, regs. 6 & 11*

ADMINISTRATIVE LAW: *Judicial review – Challenge against decision of Strata Management Tribunal ('Tribunal') – Individual parcel owner filed complaint against developer at Tribunal – Parcel owner initiated action after establishment of joint management body – Individual parcel owner sought supply of certain documents and information from developer – Tribunal delivered award compelling developer to furnish documents – Whether Tribunal had jurisdiction to deliver award in favour of individual parcel owner – Whether action initiated against wrong party – Whether there was procedural impropriety committed by Tribunal – Whether Tribunal committed serious error of law and facts – Whether award irrational and illegal – Whether award ought to be quashed – Strata Management Act 2013, ss. 15, 102, 105 & 107 – Strata Management (Strata Management Tribunal) Regulations 2015, regs. 6 & 11*

The appellant was the developer of a development project known as 'Infinity Tower'. The first respondent was the Strata Management Tribunal ('Tribunal') while the second respondent was the purchaser of two parcel units in Infinity Tower. The second respondent had filed a complaint against the appellant at the Tribunal under reg. 6 of the Strata Management (Strata Management Tribunal) Regulations 2015 ('SMR'). This was initiated by the second respondent after the establishment of the Joint Management Board ('JMB'). The Tribunal delivered its award which: (i) compelled the appellant to furnish financial records, including a specified AmBank account bank statement from the date the account was opened until the account was closed in respect of the maintenance account and sinking funds account; (ii) allowed the second respondent access to the accounting software and electronic filing under CSS Decision Sdn Bhd, which was used by the appellant for forensic audit purposes; and (iii) compelled the appellant to furnish all the plans approved by the local authorities for the lower ground related to ingress basement carpark in respect of the project. This award was unsuccessfully challenged by the appellant by way of judicial review. Hence, the present appeal on the primary grounds that: (i) the Fourth Schedule to the Strata Management Act 2013 ('SMA') must be read together with other provisions in the Act to determine the scope of the Tribunal's jurisdiction. In particular, when the questions were directed against the discovery of bank statements and approved plans, references must be made to s. 15 of the SMA which stipulated that bank statements and/or all the approved plans shall be furnished by the developer to the JMB, not to any individual parcel; and (ii) the second respondent had initiated the action against the wrong party as the Tribunal proceedings was filed subsequent to the formation of the JMB.

Held (allowing appeal)
Per Mohd Nazlan Ghazali JCA delivering the judgment of the court:

(1) The second respondent could not be said to have a real and genuine interest in the matter when the relief it asked for was not one that was envisaged in the statute to be available to be granted in favour of the second respondent as an individual parcel owner. Instead, the second respondent could have asked for the developer to be compelled to supply the requisite documents and information to the JMB in order to enforce the relevant provisions of the SMA, in this case s. 15. Whilst the Tribunal could undoubtedly hear and make determination under s. 105, including compelling a developer to supply information or documents as per para. 12 of Part 1 of the Fourth Schedule to the SMA, this did not go far enough to authorise that supply be made to an individual parcel owner. The second respondent relied on s. 107 as the basis to establish its *locus standi* to initiate the Tribunal proceedings against the appellant. However, s. 107 merely granted the second

respondent the threshold *locus standi*, not the substantive *locus standi* for the reliefs that it sought. This was because the second respondent had not shown that it had any fundamental or legal rights to seek the pleaded reliefs pursuant to the SMA. (paras 46, 50, 56 & 57)

(2) The complaints of the second respondent which gave rise to its claims and the consequent award of the Tribunal seemed to originate from allegations which included that of impropriety in the management of the relevant accounts by the appellant in respect of the project. This would clearly not be a concern pertinent only to the second respondent but, if true, would be relevant to all parcel owners. The second respondent did not, however, show any provision which permitted an individual parcel owner to take a legal action to enforce the right of the owner on individual basis when the subject matter concerned what was clearly within the remit of the developer or the JMB under the scheme of the SMA. The Tribunal proceedings was filed and pursued in the second respondent's personal capacity and not by way of representative action and there was no evidence to suggest that the majority owners of Infinity Tower had approved the action by the second respondent against the appellant. (paras 59 & 60)

(3) Regard must be had to s. 15 of the SMA, pursuant to which, when read together with Form 4 of the reg. 11 of the SMR, in fact compelled a developer to furnish all the documents identified therein, including all bank statements and approved plans to the JMB, the non-compliance with which was a criminal offence under s. 15(4). However, s. 15 did not mention nor envisage such furnishing of documents could be made to any individual parcel owners. Under the SMA, the custody and control of the documents sought were with the JMB (and the MC thereafter) and never any individual parcel owner. In this case, pursuant to s. 15, the custody and control of the documents, information and items stated therein had vested in the JMB. As such, any exercise of the power of the Tribunal under its jurisdiction as set out in para. 12 of the Fourth Schedule to Part 1 of the SMA and pursuant to s. 105(1) to compel a developer to supply information or documents must be read subject to the said remit, as envisaged in s. 15 of the SMA. The jurisdiction of the Tribunal, as stated in the Fourth Schedule, did not extend to compelling the developer to furnish the documents sought by the second respondent. (paras 66 & 76)

(4) It was for the JMB, not the appellant, to consider and decide whether or not to disclose the documents sought to the second respondent as the control and custody of the same were vested in the JMB, not the appellant and since JMB, not the appellant, was the representative of the parcel owners of Infinity Tower. On top of that, the documents sought by the second respondent in fact contained information of all the parcel

owners in Infinity Tower. The appellant would not be in a position to decide to disclose such documents to an individual parcel owner when the rightful authority to make such a decision was either the JMB or all the other owners in Infinity Tower at a general meeting. By granting the said order that would allow individual parcel owner to obtain bank statements and approved plan which were already vested in the JMB, the Tribunal had acted *ultra vires* s. 105 of the SMA. (paras 77 & 78)

(5) The award had the unintended effect of defeating the purpose of the statute because the second respondent could be made to directly obtain information and documents which an individual parcel owner had no right to obtain from the developer under the SMA. At the same time, the award also had the consequence of not respecting the wishes of the majority owners because it circumvented the decision of the JMB which had earlier refused to supply such information and documents to the second respondent. The net result would be that despite the second respondent, as an individual parcel owner, having no right under the SMA, including under the Fourth Schedule, to secure such information and documents as sought from the appellant, the award of the Tribunal, in terms which were granted would also defeat the very purpose of the statute which was a social legislation promoting community living as the will of the majority of the parcel owners and their representative body – the JMB – could be easily circumvented. (paras 90 & 91)

(6) The Tribunal did not have the jurisdiction to make an award to compel the supply of the relevant documents and information by the appellant to the second respondent. This error of law warranted the quashing of the said award. The decision of the High Court dismissing the judicial review application to quash the award of the Tribunal was therefore set aside. (para 101)

Case(s) referred to:

BU Developments Sdn Bhd v. Selangor Appeal Board & Ors [2014] 8 MLJ 539 ***(refd)***

Datuk Bandar Kuala Lumpur v. Perbadanan Pengurusan Trellises & Ors And Other Appeals [2023] 5 CLJ 167 FC ***(refd)***

Hazlinda Hamzah v. Kumon Method Of Learning Centre [2006] 2 CLJ 933 CA ***(refd)***

Innab Salil & Ors v. Verve Suites Mont' Kiara Management Corporation [2020] 10 CLJ 285 FC ***(refd)***

Malaysian Trade Union Congress & Ors v. Menteri Tenaga, Air Dan Komunikasi & Anor [2014] 2 CLJ 525 FC ***(refd)***

Martego Sdn Bhd v. Arkitek Meor & Chew Sdn Bhd & Another Appeal [2019] 8 CLJ 433 FC ***(refd)***

Pepper v. Hart [1993] AC 593 HL ***(refd)***

Pihak Berkuasa Tatatertib Majlis Perbandaran Seberang Perai & Anor v. Muziadi Mukhtar [2020] 1 CLJ 1 FC ***(refd)***

Legislation referred to:
Consumer Protection Act 1999, s. 112(1)
Interpretation Acts 1948 and 1967, s. 17A
Strata Management (Maintenance and Management) Regulations 2015, reg. 11
Strata Management (Strata Management Tribunal) Regulations 2015, reg. 6
Strata Management Act 2013, ss. 14(5), 15(4), 16, 19, 21(1), (2), 22(2), 27(1), 31, 56(2), 59(1), (2), 63(5), 102, 105(1), 106, 107(b), (c), 108, 109, 110, 111, 112, 114, 115, 117(1), (3), (4), Second Schedule, para. 7(6), Fourth Schedule, Part 1, para. 12, Part 2, para. 8

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For the 2nd respondent - Chau Yen Shen; M/s Halim Hong & Quek

[Editor's note: For the High Court judgment, please see Ideal City Development Sdn Bhd v. Tribunal Pengurusan Strata Putrajaya, Wilayah Persekutuan & Anor [2023] CLJU 913; [2023] 1 LNS 913 (overruled).]

Reported by Lina E

JUDGMENT

Mohd Nazlan Ghazali JCA:

Introduction

[1] This is an appeal against the decision of the High Court which had dismissed a judicial review application to quash the award of the Strata Management Tribunal – which included compelling the appellant developer to supply certain documents and information to a parcel owner, the second respondent in this appeal.

[2] Having examined the appeal records and considered the submissions of parties, we unanimously decided to allow the appeal principally by reason of the lack of jurisdiction of the Tribunal to make such an award. This judgment contains the full grounds for our decision.

Key Background Facts

[3] The appellant is the developer of the development project known as Infinity Tower ('the project'). The first respondent is the Strata Management Tribunal ('the Tribunal') established under s. 102 of the Strata Management Act 2013 ('the SMA 2013'). The second respondent company is the purchaser of two parcel units in Infinity Tower.

[4] The second respondent had filed a complaint against the appellant at the Tribunal under reg. 6 of the Strata Management (Strata Management Tribunal) Regulations 2015. This was initiated by the second respondent on 18 June 2019, which was a date after the establishment of the Joint Management Board ('the JMB').

Award Of Tribunal And Judicial Review At The High Court

[5] The Tribunal delivered its award which allowed most of the claims made by the second respondent, which essentially ordered, *inter alia*, that first, the appellant developer furnish financial records including a specified AmBank account bank statement from the date the account was opened until the account was closed in respect of the maintenance account and sinking funds account.

[6] Secondly, the award also allowed the second respondent access to the accounting software and electronic filing under CSS Decision Sdn Bhd which was used by the appellant since 8 October 2019 for forensic audit purposes. And thirdly, the appellant was also compelled to furnish all the plans approved by the local authorities for the lower ground related to ingress basement carpark in respect of the project.

[7] This award was unsuccessfully challenged by the appellant by way of a judicial review. The award and the subsequent dismissal of the judicial review by the High Court on 6 December 2022 form the subject of this instant appeal.

Principal Grounds Of Appeal

[8] Before us, the appellant submitted the following two key grounds of appeal in its pursuit to quash the award of the Tribunal. The first concerned what the appellant described as procedural impropriety committed by the Tribunal which infringed the appellant's right to be heard.

[9] This, according to the appellant was because new issues, which were decisive to the outcome of the Tribunal proceeding were raised by the second respondent during the hearing proceedings at the Tribunal but that the appellant was not given the opportunity to properly respond to the said new issues.

[10] Secondly, the Tribunal was argued to have committed serious error of law and facts which rendered its award irrational or illegal. On this, the appellant repeated the alleged breach of natural justice which ought to render the award illegal.

[11] But relevant to this, in addition to the argument that the ownership, custody, care and control of the documents sought by the second respondent had in fact claimed by the appellant to have already been passed to the JMB, the appellant also advanced the argument – especially important in this appeal – that whilst the Tribunal has the power to grant an order to compel the appellant to supply documents, it has no jurisdiction to make such order in favour of any individual parcel owner, and in any event more so after the JMB has already been incorporated.

[12] It was argued by the appellant that the Fourth Schedule to the SMA 2013 must be read together with other provisions in the Act to determine the scope of the Tribunal's jurisdiction. In particular, when the questions were directed against the discovery of bank statement and approved plan, references must be made to s. 15 of the SMA 2013 which stipulates that bank statements and/or all the approved plans shall be furnished by the developer to the JMB. Not to any individual parcel owners.

[13] There were other subsidiary but related grounds posited by the appellant. The appellant raised the argument that the second respondent had initiated the action against the wrong party. This was by reason that the Tribunal proceeding was filed on 19 June 2019 which was subsequent to the formation of the JMB, which was on 8 October 2018. And even the award of the Tribunal ordered the appellant to grant access to the CSS Software which had been used by the appellant since 8 October 2019, exactly one year after the JMB had started to function, never mind that the contention on the request to have access to CSS software was never even pleaded nor claimed as a relief by the second respondent in the first place.

[14] And not to mention that to provide access to the CSS software, which by then the appellant no longer controlled, would also have the input of the username and password of the parcel owners of Infinity Tower. This was despite the fact, as asserted by the appellant, that it was no longer managing Infinity Tower since 11 October 2018 following the establishment of JMB on even date, coupled with the handing over of its duties and documents to JMB *vide* two Forms 4 served on the 20 March 2019 and 8 October 2019.

[15] The appellant also argued that the award was wrongly decided on the merits of the case by contending that the award was irrational and unreasonable as it contained a serious error of law, particularly in respect of a misappreciation of evidence. The evidence in question concerned the key issues *vis-à-vis* the order of the award for the appellant to furnish a bank account and access to the CSS accounting software, which were firstly the reversal entry of mistaken data amounting to RM63,120; secondly, the bank account was not fully handed over to the JMB based on the excerpt of minutes dated 20 June 2019; and thirdly, the invoices for services charges from January 2020 included assessment charges for the years 2018 and 2019 as well.

The Stance Of The Second Respondent

[16] The second respondent contended that the Tribunal had acted within its jurisdiction in granting the award and it did not err in law or on the facts and had provided the reasons for arriving at its decision as set out in the award. The second respondent denied it had in any way abused the process in the proceedings before the Tribunal or that the appellant's right to be heard had somehow been deprived.

[17] The second respondent maintained that it had correctly made a claim at the Tribunal against the appellant, as the proper party, and not the JMB, which was supported by a strong basis and not a fishing expedition. Neither was its claim wrongly decided on its merits nor was there any misappreciation of the evidence by the Tribunal.

Analysis And Findings Of This Court

Question Of Jurisdiction

[18] As we were hearing the submissions of counsels for the appellant and the second respondent, we came to the view that the pivotal and determining issue is this appeal is one of jurisdiction of the Tribunal in delivering its award in terms as stated earlier – specifically in respect of the order compelling the appellant developer to supply documents and information to the second respondent, being one of the owners of the parcels in Infinity Tower.

[19] We deferred from giving decision but instead invited counsel to provide additional written submissions on this sole issue. We concluded the hearing on a subsequent date for continued hearing of this appeal after we heard further oral arguments from the counsel. We reserved our judgment.

Judicial Review Of Tribunal's Award

[20] This court firstly affirms the well-settled principle that an appellate court generally would not interfere with the judge's conclusions on primary facts in the inferior court unless the inferior court is shown to be so plainly wrong in arriving at its decision.

[21] In this regard, the second respondent referred to the case of *BU Developments Sdn Bhd v. Selangor Appeal Board & Ors* [2014] 8 MLJ 539 where the following passage from the judgment of Vernon Ong J (as he then was) was highlighted to us, as follows:

> [39] At the outset it should also be noted that the remedy of judicial review is not concerned with reviewing the merits of the decision in which the application for judicial review is made. Instead, the remedy of judicial review is primarily a review of the decision making process. In performing this role, the court is sitting in its supervisory jurisdiction and not in its appellate jurisdiction (*Michael Lee Fook Wah v. Menteri Sumber Manusia, Malaysia & Anor* [1998] 1 MLJ 305). The court will not interfere with the exercise of any power or discretion which has been conferred on an inferior court, administrative Tribunal or other public authority. However, the decision of the body may be quashed by an order of *certiorari* where (i) that body has acted without jurisdiction; or (ii) that body has exceeded its jurisdiction; or (iii) body has failed to comply with the rules of natural justice in a case where the rules are applicable; or (iv) there is an error of law on the face of the record or the decision is unreasonable in the Wednesbury sense. In short, whether *certiorari* will lie to quash the

decision which has already been made by that body depends not on the decision itself but on whether the decision was made *ultra vires*, unfairly or unjustly in the exercise of the discretion.

[22] However, as will be readily appreciated from the above passage, it is so plainly stated that a decision of the body like the Tribunal in this case before us may be quashed by an order of *certiorari* if among others, it has acted without jurisdiction or that it has exceeded its jurisdiction.

[23] As such, the central question in this appeal therefore is whether the Tribunal has the jurisdiction to make the award which contained the order compelling the appellant developer to supply accounting and other records to an individual parcel owner such as the second respondent, and whether the Tribunal could do so after the JMB has been incorporated.

Status Of Tribunal

[24] We would not disagree that the status of the Strata Management Tribunal would be no different from the Tribunal for consumer claims which Gopal Sri Ram JCA (as he then was) for this court in *Hazlinda Hamzah v. Kumon Method Of Learning Centre* [2006] 2 CLJ 933; [2006] 3 MLJ 124 held that the Tribunal for consumer claims is a specially constituted body to speedily deal with consumer's complaints since, like s. 112(1) of the Consumer Protection Act 1999 which requires the Tribunal to make its award 'without delay and, where practicable, within sixty days from the first day the hearing before the Tribunal commences', s. 117(1) of the SMA 2013 too states that the Tribunal shall make its award without delay and, where practicable, within 60 days from the first day the hearing before the Tribunal commences.

[25] More pertinently for present purposes, although its awards are final (which means that they are final on the facts but not on the law), they are amenable to judicial review. However, it was further held that its awards should not be struck down except in the rarest of cases, where it has misinterpreted some provision of the statute in such a way as to produce an injustice.

Jurisdiction Of Tribunal

[26] In the first place, the Tribunal is a creature of statute pursuant to s. 102 of the SMA 2013. Its jurisdiction must necessarily be defined and delineated by the provisions of the SMA 2013. Section 105 is fundamental as it concerns the jurisdiction of the Tribunal.

[27] The Tribunal has the jurisdiction to hear and determine any claims firstly as specified in Part 1 of the Fourth Schedule and secondly where the total amount in respect of which an award of the Tribunal is sought does not exceed RM250,000. Thirdly, the Limitation Act 1953 does not apply to the proceedings of the Tribunal.

[28] Section 106 sets out the provision which excludes the jurisdiction of the court where a claim is filed with the Tribunal and the claim is within the jurisdiction of the Tribunal. Section 107 lists out the persons who are entitled to file a claim, which must be made in the prescribed form (s. 108). The procedures for the sittings and proceedings of the Tribunal are stated in s. 109, and it is also provided (s. 110) that every party shall be entitled to attend and be heard at the hearing of the claim, including the rules on legal representation whilst s. 111 mandates that all proceedings before the Tribunal shall be open to the public.

[29] The Tribunal may conduct the proceedings in such manner as it considers appropriate, necessary or expedient for the purpose of ascertaining the facts or law in order that it may determine a claim (s. 114), including to determine the relevancy, admissibility and weight of any evidence without being bound by the rules of evidence under the Evidence Act 1950. The Tribunal may also under s. 115 decide whether to hold oral hearings for the presentation of evidence or oral arguments, or whether the proceedings shall be conducted on the basis of documents and other materials.

[30] As such, the starting point must accordingly be s. 105 of the SMA 2013 because it encapsulates the jurisdiction of the Tribunal to hear and determine any claims, provided they are specified in Part 1 of the Fourth Schedule to the SMA.

[31] Now, para. 12 in Part 1 of the Fourth Schedule clearly states:

> 12. A claim for compelling a developer, joint management body, management corporation or subsidiary management corporation to supply information or documents.

[32] Part 2 of the Fourth Schedule, in pursuance of s. 112 provides that:

> 8. The Tribunal may make any order of which it has the jurisdiction to make under Part 1 of this Schedule or any other order as it deems just and expedient.

[33] Accordingly, and as a consequence, given that the appellant as the developer could be compelled to supply documents pursuant to para. 12 of Part 1 of the Fourth Schedule to the SMA 2013, as contended by the second respondent, and found by the Tribunal itself, as well as affirmed by the High Court, the Tribunal did under para. 8 of Part 2 of the Fourth Schedule have the requisite power to make the orders as stated in its award to produce the relevant documents as well as to allow access to the records as specified to the second respondent as a parcel owner. On top of this, s. 107 clearly provides that no person other than those set out therein shall be entitled to file a claim to the Tribunal, and this includes, in item (b) a purchaser, or (c) a proprietor, like the second respondent herein.

[34] We do not think, however, that these provisions provide a direct answer to the key question in contention in this appeal. Whilst it may be suggested that a literal and natural ordinary interpretation of these provisions would readily translate into the Tribunal having the jurisdiction to order the appellant to supply documents and information to the second respondent having the statutory right under s. 107 to file a claim at the Tribunal, this would be an erroneous stance to take.

[35] This is because the appellant developer, based on the words of para. 12, even assuming that it had applied the literal and ordinary natural meaning of the words in para. 12, is neither prohibited from furnishing nor permitted to supply the said documents to the second respondent as an individual parcel owner.

[36] Paragraph 12, we emphasise, is silent on the recipient of the relevant document that could be ordered to be supplied by the Tribunal. If read literally without qualification, one could even argue that the Tribunal could compel production against the appellant developer in favour of any person. We understand that the second respondent does not go that far as it is asserting that the Tribunal may compel such production specifically in favour of the second respondent because as a purchaser it is entitled to make a claim to the Tribunal under s. 107 of the SMA 2013. Given that it can make a claim, the second respondent argued that it follows that it should be entitled to any of the reliefs that the Tribunal has jurisdiction to grant, as stated in Part 1 and 2 in the Fourth Schedule of the SMA 2013. This would, pursuant to para. 12, include an order from the Tribunal to compel a developer (such as the appellant in this case) to supply information or documents. In other words, the second respondent has the requisite *locus standi* to file a claim to the Tribunal.

[37] A similar interpretative approach may be made in respect of s. 107 of the SMA 2013. For whilst it enshrines the statutory right of a purchaser or proprietor of a parcel to make a claim to the Tribunal, it is silent on the types of action that could be instituted by a purchaser such as the second respondent herein. A literal reading would admit of any claims even those causes of action that have nothing to do with the SMA 2013.

[38] That cannot be the intention of Parliament when enacting this statute, in particular, this provision. Especially not when there should be due observance of the rule of statutory interpretation that a statute ought also to be construed as a whole, so that internal inconsistencies are avoided, and where ambiguities in respect of the intention of Parliament on a proposed legislation may be discovered by reference to Hansard (see *Pepper v. Hart* [1993] AC 593 HL). More pertinently for present purpose, it should be emphasised that words in a statute must be read in their specific context. Thus, the Federal Court in *Martego Sdn Bhd v. Arkitek Meor & Chew Sdn Bhd & Another Appeal* [2019] 8 CLJ 433, in its judgment delivered by Mohd Zawawi Salleh FCJ stated as follows:

A [57] It is well-established principle of interpretation that the court cannot rewrite, recast or reframe the legislation because it has no power to do so. The court cannot add words to a statute or read words which are not there. It is also well settled canon of construction that words in a statute cannot be read in isolation, their colour and content derived from their context and every words in a statute is to be examined in its context. The
B word context has to be taken in the widest sense where the court must take into consideration not only the enacting provisions of the same statute, but its preamble, the existing state of law, other statutes in *pari materia*, and the mischief which the statute is intended to remedy ... .

C **[39]** Further reinforcing this approach that the court must not consider only one section but also the entirety of the statute, including the nexus of one section not only to the other sections, but also to the general object intended to be secured by the statute is that this is well in consonance with the doctrine of harmonious construction as explained also by Mohd Zawawi Salleh FCJ
D for the Federal Court in *Pihak Berkuasa Tatatertib Majlis Perbandaran Seberang Perai & Anor v. Muziadi Mukhtar* [2020] 1 CLJ 1, in the following terms:

[78] In this regard, it would be convenient for us to discuss the doctrine of harmonious constructions. To put it simply, the doctrine of harmonious construction means a statute should be read as a whole and one provision
E of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute. Such an interpretation is beneficial in avoiding any inconsistency or repugnancy either within a section or between a section and other parts of the statute. The five main principles of this doctrine/rule are as follows:

F (i) the court must avoid a head on clash of seemingly contradictory provisions and they must construe the contradictory provisions so to harmonise them (see *Commissioner of Income Tax v. Hindustan Bulk Carriers* [2002] 3 SCC 57, p. 74);

(ii) the provision of one section cannot be used to defeat the provision contained in another unless the court, despite all its efforts, is
G unable to find a way to reconcile their differences;

(iii) when it is impossible to completely reconcile the differences in contradictory provisions, the courts must interpret them in such a way that effect is given to both provisions as much as possible (see *Sultana Begum v. Prem Chand Jain*, AIR 1997 SC 1006, pp. 1009,
H 1010);

(iv) courts must also keep in mind that interpretation that reduces one provision to useless or dead lumber is not harmonious construction (see *Commissioner of Income Tax v. Hindustan Bulk Carriers* [2002] 3 SCC 57, p. 74); and

I (v) to harmonise is not to destroy any statutory provision or to render it fruitless.

> [79] In a nutshell, the doctrine requires that the legislation be construed in a way which would achieve a harmonious result, and that construction should favour coherence in the law.

[40] The fundamental objective of statutory interpretation is to arrive at the legal meaning of a statute, which is the meaning that conveys the legislative intention. In our jurisdiction, there is also s. 17A of the Interpretation Acts 1948/1967 which was introduced *via* the Interpretation (Amendment Act) 1997 (Act A996). This important provision, it is useful to remind ourselves, states as follows:

> Regard to be had to the purpose of Act
>
> 17A. In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.

[41] As such, we say that para. 12 of Part 1 of the Fourth Schedule to the SMA 2013, like other statutory provisions highlighted in this appeal must be correctly examined in light of the rules on statutory construction, and at the same time, pursuant to s. 17A of the Interpretation Acts 1948/1967, the resultant interpretation ought to be one that would promote the purpose or object of the SMA 2013.

[42] The long title of the SMA 2013 is stated to provide for the proper maintenance and management of buildings and common property, and for related matters, whilst its preamble reads that it is expedient for the purposes only of ensuring uniformity of law and policy with respect to local maintenance and management of buildings and common property within Peninsular Malaysia and the Federal Territory of Labuan.

[43] We would in this regard draw attention to the landmark case of *Innab Salil & Ors v. Verve Suites Mont' Kiara Management Corporation* [2020] 10 CLJ 285; [2020] 6 MLRA 244 where the Federal Court ruled in favour of a management corporation and held that a particular set of house rules which prohibit short-term rentals by parcel owners passed by the owners at an extraordinary meeting was valid in law and did not infringe the SMA 2013. This decision gives clear recognition and effect to the notion that the key objective of the SMA 2013 is to promote the interests of community living within a strata scheme. Her Ladyship Tengku Maimun CJ made this clear in *Innab Salil* in the following terms:

> [26] The SMA 2013 is without doubt, a social legislation. It was passed to facilitate the affairs of strata living for the good of the community or owners of the strata title. Being social in nature, the provisions of the SMA 2013 which safeguard community interests ought to receive a liberal interpretation and not a restricted or rigid one. Accordingly, where two different interpretations are possible, it is the one which favours the

A interest of the community over the interest of the individual that is to be preferred. This is in line with the aforementioned decisions in *Ang Ming Lee* and *Hoh Kiang Ngan*.

[44] The Strata Management Act 2013 (the SMA 2013), the Strata Management (Maintenance and Management) Regulations 2015 ("the SRA") B and Strata Titles Act 1985 ("the STA 1985") regulate the management and maintenance of strata scheme developments. The SMA 2013 in particular, governs and regulates the provisions on the timeline of the management of the stratified properties, and the handing over of management between the developer, the JMB and the MC.

C **[45]** In another landmark decision in *Datuk Bandar Kuala Lumpur v. Perbadanan Pengurusan Trellises & Ors And Other Appeals* [2023] 5 CLJ 167; [2023] 3 MLJ 829 the Federal Court confirmed that the test to sue in judicial review proceedings follows a broad and liberal approach, where it suffices that an applicant demonstrates that it is adversely affected, in that it has a real D and genuine interest in the matter. It is not necessary to show it has suffered special or actual prejudice or damage.

[46] We do not think the second respondent here can be said to have a real and genuine interest in the matter when the relief it asked for is not one that is envisaged in the statute to be available to be granted in favour of the second E respondent as an individual parcel owner. Instead, the second respondent could have asked for the developer to be compelled to supply the requisite documents and information to the JMB in order to enforce the relevant provisions of the SMA 2013, in this case s. 15, to be further discussed below.

F **[47]** In its analysis that concluded that JMB and MC do not have *locus standi* to file judicial review to represent each individual parcel proprietor or lessee in their individual condominiums for matters other than common property, the Federal Court in *Perbadanan Pengurusan Trellises* (*supra*) also examined the status of the JMB and MC as statutory corporations, which purpose of incorporation is the maintenance and a management of strata G property under them, as set out in the provisions on their general duties and powers in ss. 21(1) and (2), and 59(1) and (2) of the SMA 2013, and also held, especially pertinent for the appeal before us, that that JMB and MC cannot act beyond that which is authorised by the specific legislation creating them, expressly and even impliedly.

H **[48]** On this point, Her Ladyship Nallini Pathmanathan FCJ, delivering the judgment of the court in *Perbadanan Pengurusan Trellises* (*supra*), stated the position lucidly in the following terms:

> [484] As stated in *Halsbury's Laws of England* (4th Ed) Vol 9 para 1333 at p 779:
I
> *The powers of a corporation created by statute are limited and circumscribed by the statutes which regulate it, and extend no further than is expressly stated therein*, or is necessarily and properly required for carrying into

> effect the purposes of its incorporation, or may be fairly required as incidental to, or consequential upon, those things which the legislature has authorised. *What the statute does not expressly or impliedly authorise is to be taken to be prohibited.*
>
> [485] This passage was approved and applied in the Supreme Court decision of *Malaysia Shipyard and Engineering Sdn Bhd v Bank Kerjasama Rakyat Malaysia Bhd* [1985] 2 MLJ 359; [1985] CLJ Rep 206; [1985] 2 CLJ 427 relying on Abdoolcader J's decision in *Public Prosecutor v. Datuk Haji Harun bin Haji Idris & Ors* [1977] 1 MLJ 180 (see also *Bank Pertanian Malaysia Bhd v. Koperasi Permodalan Melayu Negeri Johor* [2015] 6 MLJ 149; [2015] 9 CLJ 1; [2015] 6 AMR 213 and *Penang Development Corporation v. Teoh Eng Huat & Anor* [1993] 2 MLJ 97; [1992] 3 CLJ Rep 204; [1993] 2 CLJ 283; [1993] 1 AMR 953 ('Teoh Eng Huat'), *Prestaharta Sdn Bhd v. Badan Pengurusan Bersama Riviera Bay Condominium And Another Appeal* [2017] 1 LNS 1393) ('*Prestaharta*').
>
> [486] *There is a long line of authority which establishes that a joint management body and a management corporation, cannot act beyond that which is authorised by the specific legislation creating them, albeit expressly or impliedly.*
>
> (emphasis added)

[49] In our view, the principle underlying this important rule, like that applicable to the JMB and the MC which are established by the SMA 2013, should, as stated earlier, be equally applicable to the Tribunal which is established under s. 102 of the same statute, in that the jurisdiction of the Tribunal to make an award must similarly be founded on what is specifically authorised in the statute.

[50] We reiterate that whilst the Tribunal can undoubtedly hear and make determination under s. 105, including compelling a developer to supply information or documents as per para. 12 of Part 1 of the Fourth Schedule, this does not go far enough to authorise that supply be made to an individual parcel owner.

[51] Closely intertwined is the provision of s. 117(3) which states that in making an award, the Tribunal may make any one of the orders specified in Part 2 of the Fourth Schedule. As mentioned earlier, the second respondent here relied on the generally worded para. 8 therein which provides that the Tribunal may make any order of which it has the jurisdiction to make under Part 1 of this Schedule or any other order as it deems just and expedient.

[52] However, as just highlighted, the language in the jurisdiction provisions in Part 1 does not even in its para. 12 extend the remit of the Tribunal to compelling the developer to supply documents to an individual parcel owner. As such, reliance by the second respondent on para. 8 of Part 2 is lacking in merit.

[53] We would instead add that s. 117(4) of the SMA 2013 provides that in making an order under sub-s. (3), the Tribunal shall have regard to:

(i) the relevant provisions of this Act; or

(ii) the interest of all parcel owners or proprietors in the use and enjoyment of their parcels or the common property or limited common property.

[54] In our view, we reiterate that the necessity for the Tribunal to have regard to the relevant provisions of the SMA 2013 or the interest of all parcel owners is entirely consistent with the rule that a statute ought to be construed as a whole, such that internal inconsistencies are avoided, and also represents a firm application of s. 17A of the Interpretation Acts 1948/1967 since it advances the purpose of the SMA 2013 – which is to promote the interests of community living within a strata scheme, as affirmed by the Federal Court in *Innab Salil* (*supra*).

[55] Therefore, s. 117(4) of the SMA 2013 also does not support the case of the second respondent.

[56] This position can also be analysed in the following fashion. Whilst the second respondent relied on s. 107 as the basis to establish its *locus standi* to initiate the Tribunal proceeding against the appellant, we would be inclined to hold that s. 107 merely grants the second respondent the threshold *locus standi* but not the substantive *locus standi* for the reliefs that it sought.

[57] This is because the second respondent has not shown that it has any fundamental or legal rights to seek the pleaded reliefs pursuant to the SMA 2013. Section 107 merely reiterate sets out the categories of persons who are entitled to file a claim to the Tribunal. The second respondent is no doubt so entitled given either of para. (b) of s. 107 as a purchaser or (c) as a proprietor.

[58] This was also the situation in the case of *Malaysian Trade Union Congress & Ors v. Menteri Tenaga, Air Dan Komunikasi & Anor* [2014] 2 CLJ 525; [2014] 3 MLJ 145, where although the applicant, MTUC, was found to have been clothed with threshold *locus standi*, it was held that it failed to meet the requirement of substantive *locus standi* because it was not entitled to the relief sought.

[59] The complaints of the second respondent which gave rise to its claims and the consequent award of the Tribunal seemed to originate from allegations which included that of impropriety in the management of the relevant accounts by the appellant developer in respect of the project.

[60] This would clearly not be a concern pertinent only to the second respondent but if true, would be relevant to all parcel owners. The second respondent did not, however, show any provision which permits an individual parcel owner to take a legal action to enforce the right of the owner on individual basis when the subject matter concerns what is clearly

within the remit of the developer or the JMB under the scheme of the SMA 2013. The Tribunal proceeding was filed and pursued in the second respondent's personal capacity and not by way of representative action, and there is no evidence to suggest that the majority owners of Infinity Tower have approved the action by the second respondent against the appellant.

[61] That the contention that the provision of the Fourth Schedule must be read with the rest of the statute is especially compelling when, as submitted by the appellant, a literal interpretation of para. 3 in respect of the jurisdiction of the Tribunal to decide on a claim for the recovery of charges, or contribution to the sinking fund, or any amount which is declared by the provisions of the statute as a debt is taken up by a parcel owner against a fellow owner who is alleged to be in such default before the Tribunal. This surely is not envisaged by the scheme of the SMA 2013 and is far from promoting the purpose of the statute.

[62] Under s. 14(5) of the SMA 2013 for example, any failure by the developer to comply with its duties in relation to the management of accounts is a criminal offence. Also, under s. 15, as will be further discussed below, the developer is obliged to hand over all account balances and other financial and other documents including approved plans to the JMB on the establishment of the latter.

[63] As such, the right of any individual owner must be read to be exercisable within the remit of these other provisions of the SMA 2013, such as to apply to the Tribunal to compel the developer to submit all such balances or documents to the JMB in adherence to s. 15 if the allegation is that the developer had not done so or not done so completely.

The JMB Has Been Established

[64] As intimated above, the other key reason why the claim of the second respondent against the appellant developer ought not to have succeeded is that the JMB has already been established. The appellant had submitted Form 4 pursuant to reg. 11 of the Strata Management (Maintenance and Management) Regulations 2015 to the Commissioner of Building on 20 March 2019 and 8 October 2019 respectively. The JMB had acknowledged having received all documents stated in the Forms 4 submitted by the appellant respectively. The JMB also confirmed and verified that they had received all the documents envisaged under the SMA 2013 from the appellant. As highlighted by the appellant, at the time the judicial review application was filed by the appellant, the second respondent had filed at least eight Tribunal proceedings against the appellant. And at the time of the filing of the main written submissions herein, the number had increased to ten. Furthermore, the Management Corporation has also since been incorporated – specifically on 2 September 2022, and strata titles have since been issued.

[65] Thus, whilst para. 12 of Part 1 of the Fourth Schedule to the SMA 2013 empowers the Tribunal to compel a developer, like the appellant herein to supply information or documents, and as stated above, does not specifically mention whether such supply could be made to an individual parcel owner, another related question is whether such an order could be made by the Tribunal in a situation where the JMB has already been established, like presently.

Section 15 Of The SMA

[66] Regard must accordingly be had to s. 15 of the SMA 2013, pursuant to which, when read together with Form 4 of the Regulation 11, Strata Management (Maintenance and Management) Regulations 2015, in fact compel a developer to furnish all the documents identified therein including all bank statements and approved plans to the JMB, non-compliance with which is a criminal offence under s. 15(4). But s. 15 does not mention, and we say neither does it envisage, such furnishing of documents could be made to any individual parcel owners.

[67] Section 15 of the SMA 2013 reads as follows:

15 Handing over by developer to the joint management body

(1) A developer shall, before the developer's management period expires-

(a) *transfer all balances of moneys in the maintenance account and the sinking fund account, after payment of all the expenditure which have been properly charged to the accounts, to the joint management body*;

(b) *hand over to the joint management body*:

(i) the administration office set up by the developer under para. 9(4)(a);

(ii) *the audited accounts of the maintenance account and the sinking fund account or, if such accounts have not been audited, the unaudited accounts*;

(iii) all the assets of the development area;

(iv) *all records relating to and necessary for the maintenance and management of* the buildings or lands intended for subdivision into parcels and the common property of the development area; and

(v) *all invoices, receipts and payment vouchers in respect of the maintenance account and sinking fund account*.

(2) if only unaudited accounts have been handed over under sub-para. (1)(b)(ii), the developer shall, not more than three months after the expiry of the developer's management period, hand over to the joint management body the audited accounts up to the date of transfer of the balances of moneys referred to in para. (1)(a).

(3) Without prejudice to the generality of subparagraph (1)(b)(iv), *the developer shall deliver to the joint management body copies of all of the following documents*:

(a) *all approved plans for buildings or lands intended for subdivision into parcels relating to the development area*;

(b) any document in the developer's possession that indicates, as far as practicable, the actual location of any pipe, wire, cable, chute, duct or other facility for the passage or provision of systems or services, if the developer has reason to believe that the pipe, wire, cable, chute, duct or other facility is not located as shown on an approved plan or an approved amended plan;

(c) all contracts entered into by the developer in respect of the maintenance or management of any building or land intended for subdivision into parcels and the common property comprised in the development area;

(d) a copy of the schedule of parcels or the amended schedule of parcels filed with the Commissioner under subsection 6(1) or (2), if applicable, or a copy of the proposed strata plan filed with the Director under the provisions of the Strata Titles Act 1985, if any;

(e) the names and addresses of such contractors, subcontractors and persons who supplied labour or materials to the development area during the construction of any building or land intended for subdivision into parcels and the common property comprised in the development area;

(f) all warranties, manuals, schematic drawings, operating instructions, service guides, manufacturer's documentation and other similar information in respect of the construction, installation, operation, maintenance, repair and servicing of any common property, including any warranty or information provided to the developer by any person referred to in para. (e);

(g) the register of all parcel owners of the buildings or lands intended for subdivision into parcels; and

(h) the original copy of all insurance policies effected under this Act.

(4) Any developer who fails to comply with subsection (1), (2) or (3) commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both and, in the case of a continuing offence, to a further fine not exceeding five thousand ringgit for every day or part thereof during which the offence continues after conviction.

(emphasis added)

[68] Section 27 of the SMA 2013 in turn makes it mandatory for the JMB to undertake the similar transfer and hand-over arrangement (like imposed in s. 15 on the developer *vis-à-vis* the JMB) on largely the same items in respect of balances of moneys, records, approvals and other documents to the Management Corporation (MC), not more than one month from the date of

A the first annual general meeting of the MC. Under s. 27(1), the JMB itself must dissolve within three months from the date of the first annual general meeting of the MC.

[69] It cannot be emphasised enough that the scheme of the SMA 2013 makes the JMB (and the MC subsequently) embody the representative nature B of the entity which comprises parcel owners who were elected by the majority of the owners to manage the stratified properties. The JMB is a representative body of all parcel owners of the stratified development to manage the same, and was elected by the owners who attend the general meeting.

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[70] We have already stated that there is no provision in the SMA 2013 which states that an individual parcel owner has the right to obtain the bank statement and/or approved plan from the developer. Instead, para. 12 of Part 1 of the Fourth Schedule to the SMA 2013 merely empowers the Tribunal to compel a developer to supply information or documents without D stating it could be made to be given to an individual owner.

[71] At the same time, s. 15 specifically provides for the entitlement of JMB (and that of the MC under s. 27) to be handed over and furnished with documents such as balances of moneys in account, approved building plans and other documents like presently directed by the Tribunal for the E developer to supply to the second respondent.

[72] In other words, s. 15 even spells out the types of information, document or items that must be delivered to the JMB and MC. In sharp contrast, para. 12 of Part 1 of the Fourth Schedule to the SMA 2013 is silent F not only on whether documents and information could be ordered to be made against the developer in favour of the individual parcel owner, but also on the type of document and information that could be so ordered by the Tribunal.

[73] The question of what exactly could be given to whom by the Tribunal G is not certain and is basically equivocal in para. 12 of Part 1 of the Fourth Schedule to the SMA 2013 but is unmistakably crystal clearly answered in mandatory terms in s. 15 of the SMA 2013.

[74] We must further add that under s. 16 of the SMA 2013, any balance of moneys in the maintenance account and in the sinking fund account which H has not been transferred by the developer under s. 15 shall in any event automatically vest in the JMB on the date of the expiry of the developer's management period.

[75] The second respondent was fully aware that it could only seek permission for the documents from the JMB, the party which under the law I had already by then been vested with the custody and control of the documents, as reflected in the second respondent's own letter to JMB of 12 December 2019 (not to the appellant developer) when the second

respondent alleged that the JMB refused to furnish to the second respondent with the bank statements. The second respondent therefore knew that JMB was the proper forum for such request. Despite this, the second respondent still chose to initiate the proceedings before the Tribunal against the appellant. This suggests that the argument of the appellant that the second respondent did not initiate the Tribunal proceeding with clean hands is not without merit.

[76] We, therefore, state that under the SMA 2013, the custody and control of the documents sought are with the JMB (and the MC thereafter), and never with any individual parcel owner. In this case, pursuant to s. 15, the custody and control of the documents, information and items stated therein have vested in the JMB. As such, any exercise of the power of the Tribunal under its jurisdiction as set out in para. 12 of the Fourth Schedule to Part 1 of the SMA 2013 and pursuant to s. 105(1) to compel a developer to supply information or documents must be read subject to the said remit as envisaged in s. 15 of the SMA. In our view the jurisdiction of the Tribunal as stated in the Fourth Schedule does not extend to compelling the developer to furnish the documents sought by the second respondent in favour of the second respondent.

[77] It is therefore in this case for the JMB, not the appellant developer to consider and decide whether or not to disclose the documents sought to the second respondent as the control and custody of the same are vested in the JMB, not the appellant and since JMB, not the appellant is the representative of the parcel owners of Infinity Tower. On top of that, we reiterate that the documents sought by the second respondent in fact contains information of all the parcel owners in Infinity Tower. The appellant would not be in a position to decide to disclose such documents to an individual parcel owner when the rightful authority to make such a decision is either the JMB or all other owners in Infinity Tower at a general meeting.

[78] Thus, by granting the said order that would allow individual parcel owner to obtain bank statements and approved plan which were already vested in the JMB, the Tribunal had acted *ultra vires* s. 105 of the SMA 2013.

Section 31 Of The SMA

[79] It is also of relevance to refer to s. 31 of the SMA 2013. This sets out the certification or written confirmation by the developer or the JMB that a parcel owner is entitled to in respect of information on the sums of charges or contribution to the sinking fund payable, on the time and manner of the payment, the amount of arrears if any, the sum standing to the credit of the maintenance account and the sinking account as well as all other information in respect of the parcel of the owner as stipulated therein. For completeness, the provision reads as follows:

A 31 Right of parcel owner or prospective purchaser

Subject to a payment of a fee not exceeding fifty ringgit, on application by or on behalf of a person who is a parcel owner, or by or on behalf of a person who is a prospective purchaser, the developer or the joint management body, as the case may be, shall issue to that person a
B certificate certifying:

(a) the amount of the Charges, and contribution to the sinking fund, payable by a parcel owner;

(b) the time and manner of payment of the amount of such Charges, and contributions to the sinking fund;

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(c) the amount, if any, of arrears of such Charges, and contributions to the sinking fund, in respect of the parcel;

(d) the sum standing to the credit of the maintenance account and the sum in the account that has been committed or reserved for expenses already incurred by the developer or the joint management
D body, as the case may be;

(e) the sum standing to the credit of the sinking fund account and the sum in the account that has been committed or reserved for expenses already incurred by the developer or the joint management body, as the case may be; and

E

(f) the nature of the repairs and estimated expenditure, if any, where the developer or the joint management body, as the case may be, has incurred any expenditure or is about to perform any repairs, work or act in respect of which a liability is likely to be incurred by the parcel owner of the parcel under any provision of this Act.

F **[80]** This statutory provision is especially instructive for two reasons, both of which further advance the case of the appellant.

[81] The first is that it demonstrates that a proprietor such as the second respondent herein is entitled to a certification in respect of the key matters concerning the amount of the charges, contribution, arrears, and sums
G standing to the credit of the sinking and maintenance accounts, as well as other related information set out in the provision *vis-à-vis* his parcel. At the same time, despite these being important matters, only a summary-like certificate is what a proprietor will be able to get, and even then only in respect of the matters actually stated in this s. 31 and no other.

H **[82]** Yet, the second respondent here had secured an award from the Tribunal that compelled the appellant to furnish actual documents on financial records including a bank statement from the date the account is opened until the account is closed in respect of the maintenance account and sinking funds account. This is not only in respect of the account of the second
I respondent but as mentioned, encompasses those of all parcel owners and occupiers of Infinity Tower as well. And the approved plan is patently out of the scope of s. 31.

[83] The second point is this. This provision also clearly recognises, as it surely must, the time period involving the earlier developer's management period and the subsequent JMB's management period in light of the words "… the developer or the joint management body, as the case may be, ...". The effect of this is unmistakable in that the proprietor should only apply for the requisite certificate to and such certificates could only be issued by the party in management of the properties at the time of the application. Here it is undeniable that the relevant period which follows the scheme of the SMA 2013 must at that point in time be the JMB's management period.

[84] Yet here, despite, as shown by evidence, the second respondent already knew that the JMB had been established and taken over management control of Infinity Towers, the second respondent still chose to insist in the Tribunal proceeding that the appellant developer, not the JMB, to accede to its request for information which was subsequently granted by the Tribunal, and now subject to appeal before us.

The Second Schedule

[85] There is one other provision in the SMA 2013 which further supports the position that an individual owner is not entitled to the type of documents and information successfully sought by the second respondent in this instant case before us. This is contained in the Second Schedule to the SMA 2013 which is in pursuance of sub-ss. 22(2), 56(2) and 63(5) of the said Act which admittedly applies only to management corporations. There are no similar provisions for developers and JMB and this is probably due to the temporary nature of the management of the stratified properties by the developers and JMB in the scheme of the SMA 2013.

[86] Paragraph 7 of the Second Schedule which concerns the duty of the management committee to keep the records and accounts of management corporation, contains in sub-para. (6) the following duties:

> (6) The management committee shall:
>
> (a) cause to be prepared such accounts and records of accounts as will sufficiently explain the transactions of the accounts and enable true and fair balance sheet, income and expenditure statement and profit and loss statement to be prepared; and
>
> (b) **on the application of a proprietor** or chargee of a parcel or a proprietor of a provisional block (or any person authorized in writing by him), **make the books of accounts available for inspection during office hours of the management corporation, at a fee not exceeding fifty ringgit for each inspection**.
>
> (emphasis added)

[87] Therefore, a parcel owner like the second respondent herein is entitled only upon payment of a fee, to inspect the books of accounts of the MC, during office hours of the management corporation, very much like a member of a company under the Companies Act 2016. The inspection

provision does not seem to permit the copies of such documents be furnished to the owner. Even in order to gain access to such documents, such an owner must first under the Second Schedule apply with a fee payment to the management committee before a mere inspection could be allowed. And it bears repetition there is no equivalent provision permitting such inspection against either the developer or the JMB.

[88] In other words, a parcel owner like a second respondent herein plainly does not have any legal rights to obtain bank account statement, approved plan or other financial records under the SMA 2013 from either the developer such as the appellant or the JMB or the MC. As an owner the second respondent has the right to ask from either the developer or the JMB for a certificate on the status of the sums of charges relevant to his parcel under s. 31, and to apply for merely an inspection of the books of accounts but even then only *vis-à-vis* the MC under the Second Schedule.

[89] Paragraph 12 in Part 1 of the Fourth Schedule stating the jurisdiction of the Tribunal on a claim by an owner compelling a developer to supply information or documents should instead be more properly construed and applied by way of defining the jurisdiction as being to compel the developer to supply the requisite documents to JMB in consonance with the requirement of the law in s. 15 of the SMA 2013.

[90] Otherwise, the award of the Tribunal has the unintended effect of defeating the purpose of the statute because the second respondent could be made to directly obtain information and documents which an individual parcel owner has no right to obtain from the developer under the SMA 2013. At the same time, the award also had the consequence of not respecting the wishes of the majority owners because it circumvented the decision of the JMB which had earlier refused to supply such information and documents to the second respondent, as asserted by the second respondent in its letter to the JMB of 12 December 2019.

[91] The net result would be that despite the second respondent, as an individual parcel owner having no right under the SMA 2013 (including under the Fourth Schedule) to secure such information and documents as sought from the appellant developer, the award of the Tribunal in terms which were granted would also defeat the very purpose of the statute which is a social legislation promoting community living as the will of the majority of the parcel owners and their representative body – the JMB – could be easily circumvented.

[92] In conclusion, it is our view that the SMA 2013 does not accord any rights to an individual parcel owner to obtain bank statements, approved plans or other documents and records from the appellant developer. The Tribunal does not have the jurisdiction to order the same in the award granted to the second respondent. Furthermore, and in any event, the custody and care of the bank statements, the approved plans and other documents sought by the second respondent had already been handed over to the JMB

under s. 15 of the SMA such that in the first place it was wrong for the second respondent to have made such claim against the developer instead of the JMB before the Tribunal.

[93] In light of our above decision in relation to the jurisdiction of the Tribunal, or the lack of it in delivering the award in question, we do not find it necessary to deal with the merits of the case of the second respondent.

[94] Nonetheless, based on our review of the appeal record, we are more inclined to disagree with the findings of the Tribunal that there was firstly, impropriety on the part of the appellant in its handling of the relevant account because the pertinent event of reversal occurred during the management of Infinity Tower by JMB, not the appellant's. In addition, testimony from no less than the treasurer of the JMB confirmed that it was an administrative error during JMB's tenure that necessitated the reversal of data input. Furthermore, such information on reversal was included in the financial statements of the JMB which had been tabled for consideration in accordance with s. 19 of the SMA 2013 by way of an agenda for the first annual general meeting of the JMB.

[95] Crucially, at the AGM – the owners of the parcels on Infinity Tower in attendance did in fact unanimously agree to adopt the financial statements audited by the approved auditor appointed by the appellant. Even more importantly, based on the relevant minutes of the said first AGM, the adoption of the audited financial statements was proposed by the second respondent no less, specifically by one Amanda Woo as a proxy for the second respondent at the AGM. Given that the AGM which constituted the entire ownership of Infinity Tower (*albeit* those who attended) had agreed to the adoption of the audited financial statements, we see no legitimate basis for the order compelling the production of the bank statement pertaining to the maintenance and sinking fund accounts, more so to only one of the many owners who at the AGM had unanimously (inclusive of that one owner – the second respondent) agreed to the adoption of the financial statements of the JMB.

[96] In relation to the issue concerning the invoices dated 1 January 2020 we noted that the invoices on the quit rent for previous years were only tendered after the conclusion of trial which denied the appellant its right to cross-examine the same. This is on top of the fact that the issues on the invoices for services from January 2020 to March 2020 were never raised by the second respondent in the pleadings or the proceedings before the Tribunal.

[97] The requirement to produce the approved plan for the carpark, should the intention be to adjust or vary the existing entrance to the carpark, could also be questioned. This is because, as correctly highlighted by the appellant, the entrance of the carpark falls within the operational and management of the building. This in turn falls within the remit of the JMB once it is formed,

in line with s. 21 of the SMA 2013 on the duties and powers of a joint management body which primarily includes to properly maintain and manage the building and to do such other things as may be expedient or necessary for the proper maintenance and management of the buildings. The issue of carpark ingress had even been raised at the same first AGM where the relevant minutes (item 4. Carpark at B2) recorded the position taken by the developer on the problems mentioned, which highlighted that this was the stance taken prior to the formation of the JMB. Now, it has been submitted that strata titles have also already been issued to the parcel owners of Infinity Tower, rendering any complaints on the issue academic.

[98] It is not the question of, as argued by the second respondent, the appellant having misconstrued the award as a discovery order to produce bank documents that run against the Bankers' Book (Evidence) Act 1949, which we agree lacks any relevance to the instant case.

[99] The second respondent's case is that evidence before the Tribunal was in sharp contrast with the appellant's claim that the appellant had fully handed over the accounting records to the JMB. As was the Tribunal's finding that there was also impropriety in the accounts managed by the appellant. Evidence shows that the JMB had received all the documents from the appellant. When specifically asked why these were not supplied to the second respondent, the treasurer from JMB, Yee Chu Yun, replied that such would be a call to be made by the JMB.

[100] Neither had the appellant wrongly considered the award as a mandatory injunction granted by the court. We stress that the award differs from a mandatory injunction as it is purely awarded by the Tribunal within its jurisdiction under the SMA 2013 to order a party to supply information or documents.

Conclusion

[101] In light of the foregoing analysis and reasons, we conclude that the Tribunal did not have the jurisdiction to make an award to compel the supply of the relevant documents and information by the appellant to the second respondent. This error of law warranted the quashing of the said award. The decision of the High Court dismissing the judicial review application to quash the award of the Tribunal is therefore set aside and the appeal is allowed, with cost of RM20,000 to the appellant, here and below, subject to allocatur.